

The Texas Education Agency (TEA) adopts new §61.1000, concerning maximum compressed tax rate calculation and data collection. The amendment is adopted with changes to the proposed text as published in the January 17, 2020 issue of the *Texas Register* (45 TexReg 452) and will be republished. The adopted new section reflects changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will collect data and calculate and make available maximum tier one tax rates using local property values.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, enacted Texas Education Code (TEC), §48.2551, Maximum Compressed Tax Rate, which provides the calculation to develop the maximum compressed tax rates (MCRs) for school districts. TEA will calculate and make available the maximum tier one tax rate for each district on an annual basis.

Adopted new §61.1000 clarifies the data collection necessary for TEA to calculate and make available school districts' maximum maintenance and operations (M&O) compressed tax rates using locally certified values to make calculations under TEC, §48.2551.

Adopted new subsection (a) establishes that the new rule is made pursuant to TEC, §48.011 and §48.004, to address calculations in TEC, §48.2551.

Adopted new subsection (b) sets forth the method used to calculate the MCR.

Adopted new subsections (c)-(h) describe the method that TEA will use to collect data from districts as well as the timeframes and processes for data collection, release of preliminary MCRs, and submission of appeals, as follows.

New subsection (c) specifies that TEA will initiate a data collection annually to collect school district property value growth estimates using specific data. As proposed, subsection (c) would have used a May collection period for collecting April preliminary values. In response to public comments stating that the April preliminary data would not be complete and should not be relied upon, the new rule has been modified at adoption to change the collection timeline to 12:01 a.m. on July 18 through 11:59 p.m. on August 1 and to amend the data school districts must submit. Rather than April and July county appraisal district values, school districts must submit the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable. Also in response to public comment, adopted subsection (c) states that school districts must submit local exemption total dollar amounts for the preceding and current tax years rather than local exemption changes.

TEA will convert the local values into projected property values used for state funding ("Estimated T2" values) and then compute the MCRs. TEA will calculate districts' compressed tax rates based on the greater of the statewide average growth rate or the individual district growth rate.

As proposed, subsections (d) and (e) stated that TEA would approve each district's preliminary maximum compressed tier one tax rate on or around the second Monday in June of each year and publish the final maximum compressed tier one tax rate 30 calendar days after the deadline for submitting appeals. At adoption, subsections (d) and (e) were amended to state that TEA will approve each district's preliminary maximum compressed tier one tax rate on or before August 5 and publish the final maximum compressed tier one tax rate no later than August 31. These date changes conform to the delay of the data collection timeline.

The new rule includes an appeal process for districts regarding the preliminary maximum compressed tier one tax rates. Subsection (f) was amended at adoption to specify that if TEA does not receive an appeal of a preliminary MCR, the preliminary MCR automatically becomes a final MCR 10 calendar days following TEA's approval of the district's preliminary MCR. As proposed, the preliminary MCR would have automatically become a final MCR on July 31. This date change conforms to the delay of the data collection timeline. TEA will only consider appeals that would result in a change of the preliminary tax rate.

Finally, subsection (g)(1) was amended at adoption to refer to TEA's approval of a district's preliminary MCR rather than the release or issuance of a preliminary MCR. This change will allow flexibility for individual districts to move forward with their tax rate adoptions prior to TEA issuing preliminary MCRs for all school districts.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 17, 2020, and ended February 18, 2020. A public hearing on the proposal was held at 8:30 a.m. on February 5, 2020, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Following is a summary of the public comments received and corresponding agency responses.

Comment: Texas Association of School Business Officials (TASBO); Texas Association of School Administrators (TASA); Texas Association of School Boards (TASB); Texas School Alliance; Moak, Casey & Associates; Texas Association of Appraisal Districts; 14 appraisal districts; 4 school districts; and a Texas parent commented that April Preliminary Certified Values should not be used for the MCR data collection and calculation. The commenters expressed concerns that the April data would be missing crucial information and are strictly estimates that may not reflect rendition deadlines, Appraisal Review Board decisions, protests, optional local homestead exemptions, agricultural exemptions, and volatile gas and mineral valuations.

Agency Response: The agency agrees. At adoption, §61.1000 has been modified to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Montgomery Central Appraisal District commented that under Texas Property Tax Code, §11.13(n), school districts have until July 1 of each year to set the local optional homestead exemption amount and that this date is after the date requested in the proposed rule.

Agency Response: The agency agrees. At adoption, §61.1000 has been modified to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Three school districts commented that April preliminary values could result in an inaccurate calculation and could result in significant settle-up payments both to and from school districts, negatively impacting the ability of districts to budget responsibly and effectively.

Agency Response: The agency partially agrees. The use of April preliminary property values would not result in settle-up payments to and from school districts. However, at adoption, §61.1000 has been modified to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Moak, Casey & Associates commented that the agency will project a local certified value based on the historical relationship between the previous year's April 30 estimate and the July certified roll. The commenter stated that there is not a particularly consistent relationship between those values, raising questions regarding whether it is appropriate to make that assumption.

Agency Response: The agency provides the following clarification. The agency was not planning to use April 30 estimates to project the July certified roll. However, in response to other comments, §61.1000 has been modified at adoption to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: A Texas administrator commented that using only one preceding year's data could result in a gross over- or under-estimation of values. A 6-year analysis of the variance between this district's April values and July values for the district shows that they can vary between 2.5% and 5.4%.

Agency Response: The agency provides the following clarification. The agency was not planning to use April 30 estimates to project the July certified roll. However, in response to other comments, §61.1000 has been modified at adoption to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Montgomery Central Appraisal District commented that proposed §61.1000(c)(1) and (3) need to define how these values are reported and in what format. The commenter stated that these are preliminary values and only

stored on an account level for a short time. The commenter also stated that software is not able to recreate these values on an account level as is produced in the Electronic Appraisal Roll Submission after July certification.

Agency Response: The agency agrees. Therefore, §61.1000 has been modified at adoption to remove the April preliminary values as proposed and specify in subsections (c)(1) and (2) that TEA will collect the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Moak, Casey & Associates commented that §61.1000(c)(1)-(3) request "CAD preliminary certified property values" or "CAD certified property values" for either the current or preceding year. The commenter stated that based on the types of exemption information requested in subsections (c)(4) and (5), it would seem like the agency would be requesting the "net taxable value," not the total market value. The commenter recommended that this should be explicitly stated in the rule.

Agency Response: The agency agrees. Section 61.1000 has been modified at adoption to remove references to the "CAD Certified Property Values" and April preliminary values as proposed. The adopted new rule specifies that TEA will collect the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: A Texas parent commented that the terms used to describe the requested data need to be refined and be more specific to Texas Government Code, §403.302(d).

Agency Response: The agency agrees. Section 61.1000 has been modified at adoption to remove references to the "CAD Certified Property Values" and specify that TEA will collect the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Three school districts commented that receiving tax rates by May 31 is important for districts that adopt their proposed budgets in June.

Agency Response: The agency disagrees. In response to other comments, the data collection timeline will be delayed and will use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Historically, school districts whose fiscal years end on June 30 have relied on preliminary estimates of local property values to adopt their budgets before the July certified property values are released. These districts can use statewide compression rates to calculate maximum tier one tax rates, and they can add their tier two pennies for purposes of planning for their proposed M&O tax rates.

This methodology will allow districts to comply with the 10-day notice requirement in TEC, §44.004. Under Tax Code, §26.05(a), school districts must adopt tax rates before September 30 or by the 60th day after the taxing unit receives the certified appraisal roll, whichever date is later.

Comment: TASBO, TASA, TASB, and the Texas School Alliance commented that TEA should consider two alternative data sources instead of the preliminary estimate: the July 25 certified local values or the prior year values certified through the comptroller's property value study. The commenter stated that using the July certified values would require districts with a July 1 fiscal year to publish notice based on an estimated tax rate to meet the June budget and tax rate hearing notices.

Agency Response: The agency agrees. Section 61.1000 has been modified at adoption to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Historically, school districts whose fiscal years end on June 30 have relied on preliminary estimates of local property values to adopt their budgets before the July certified property values are released. These districts can use statewide compression rates to calculate maximum tier one tax rates and they can add their tier two pennies for purposes of planning for their proposed M&O tax rates.

This methodology will allow districts to comply with the 10-day notice requirement in TEC, §44.004. Under Tax Code, §26.05(a), school districts must adopt tax rates before September 30 or by the 60th day after the taxing unit receives the certified appraisal roll, whichever date is later.

Comment: Keller Independent School District (ISD), Texas Association of Appraisal Districts, Hunt County Appraisal District, Texas School Coalition, Frisco ISD, Northwest ISD, Montgomery Central Appraisal District, and a Texas parent commented that the rule should be amended to clarify the required information and request the same information used by the comptroller to complete the Property Value Study. The commenter stated that this would allow the TEA to have all the data necessary to ensure as accurate an estimate as possible.

Agency Response: The agency agrees. Section 61.1000 has been modified at adoption to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Texas Association of Appraisal Districts and Hunt County Appraisal District commented it appears that one of the reasons for the rule is to try and estimate a school district's T2 value for current year prior to the value being certified through the Property Value Study. The commenter stated that if this is the case, much of the data needed to develop a school district's T2 value is not part of the data requested under the proposed rule and that it is important to understand that the T2 values are not a function of the appraisal district's values. The commenter continued that once the appraisal district certifies the appraisal roll and submits the certified data to the comptroller's office, there are several adjustments that must be made for exemptions and freeze information that are not calculated in the appraisal district's reports and that freeze information is a function of the tax assessor/collector and is not the responsibility of the appraisal districts to calculate or report.

Agency Response: The agency provides the following clarification. HB 3, 86th Texas Legislature, 2019, intended to use current year property values to compress district M&O tax rates. The intent of the rule is to describe the data needed by the agency to estimate local property value growth rates, which would then be used to calculate and make available maximum tier one tax rates.

Comment: TASBO; TASA; TASB; the Texas School Alliance; Texas School Coalition; Moak, Casey & Associates; Frisco ISD; and Keller ISD commented that using July certified local values could serve as an impediment to compliance with the 10-day notice requirement in TEC, §44.004, particularly for districts needing to order a voter approval Tax Ratification Election by August 17. The commenters stated that waiting until July 25 would also leave little time, if any, for districts to make corrections to data errors, which could lead to errors in the tax rate calculation.

Agency Response: The agency disagrees. Districts can use statewide compression rates to calculate maximum tier one tax rates, and they can add their tier two pennies for purposes of planning for their proposed M&O tax rates.

This methodology will allow districts to comply with the 10-day notice requirement in TEC, §44.004. Under Tax Code, §26.05(a), school districts must adopt tax rates before September 30 or by the 60th day after the taxing unit receives the certified appraisal roll, whichever date is later.

In addition, TEC, §11.184, requires the board of trustees of a school district to conduct an efficiency audit before seeking voter approval to adopt a tax rate for the maintenance and operations of the district at an election held for that purpose and may not hold the election without complying with this section. This new statute will require districts to plan significantly in advance prior to considering a tax rate election.

However, in response to other comments, including comments made by many of the same parties, §61.1000 has been modified at adoption to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: TASBO, TASA, TASB, and the Texas School Alliance commented that because there is no statutory process for correcting the tax rate once it is adopted, it is critical that districts have reliable information well in advance of tax rate adoption. The commenters stated that the potential for error in the first year of data collection,

when 1,000 school districts will be completing the survey for the first time, should be a concern for all involved parties.

Agency Response: This comment is outside the scope of the rule proposal.

Comment: Texas Association of Appraisal Districts and Hunt County Appraisal District inquired if the data requested regarding prior year and current year April estimates is asking for market value, net taxable value, or freeze adjusted value.

Agency Response: The agency provides the following clarification. Section 61.1000 has been modified at adoption to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Montgomery Central Appraisal District commented that §61.1000(c)(4) needs to define the changes that are being requested: total dollar value per ISD or individual account or those set by the entity.

Agency Response: The agency provides the following clarification. The agency is requesting the total dollar value for the school district. In response to this and other comments, §61.1000 was modified at adoption to specify in subsection (c)(3) and (4) that school districts must submit the local exemption total dollar amounts for the preceding and current tax years.

Comment: Texas Association of Appraisal Districts and Hunt County Appraisal District asked for clarification regarding local exemption changes for the preceding year and local exemption changes for the current year. Specifically, the commenter asked if the agency was requesting the total cumulative dollar amount of the exemptions, the local option amount per individual properties, or the total number of properties that qualify for the exemptions.

Agency Response: The agency provides the following clarification. The agency is requesting for the total dollar value for the school district. In response to this and other comments, §61.1000 was modified at adoption to specify in subsection (c)(3) and (4) that school districts must submit the local exemption total dollar amounts for the preceding and current tax years.

Comment: A Texas administrator commented that providing a short window of 10 days to protest the preliminary MCR may not provide a realistic window on which to determine if the MCR was based upon a "reasonable" property value calculation. Three school districts commented that the timeline in the proposed rule provides a limited window for appeals and should be extended.

Agency Response: The agency disagrees. School districts will be able to review the data and preliminary calculated maximum tax rates prior to submission to the agency. This pre-submission review opportunity should mitigate the margin of errors caused by data entry errors. In addition, a short appeal window is needed in order to meet other concerns pertaining to timelines surrounding voter approval elections.

However, in response to other comments, §61.1000 has been modified at adoption to delay the data collection timeline and use the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable.

Comment: Moak, Casey & Associates commented that the agency should be clear that it does not intend to impose penalties or change MCR determinations as a result of errors or inaccurate forecasts of taxable value. The commenter stated that HB 3 changes the dynamics of tax rate adoption in very significant ways and actually creates incentives that allow districts to adopt lower tax rates without a significant financial cost if they experience high property value growth.

Agency Response: The agency disagrees. There is no provision in statute or the proposed rule discussing the imposition of penalties or changes to the maximum tier one tax rates once adopted.

Comment: Moak, Casey & Associates commented that subsections (e) and (f) refer to a "final determination" or "final tax rate." The commenter stated that it is important for school districts to have certainty with respect to this rate determination, as their action to adopt tax rates proceeds directly from this determination, but that subsection (i), which allows the commissioner to waive anything in the rule, seems to negate the certainty that districts need.

Agency Response: The agency disagrees. The agency will calculate and make available preliminary maximum compressed tier one tax rates for each school district. If the agency does not receive an appeal of a preliminary MCR, the preliminary MCR automatically becomes final after the appeals window is closed. During the appeals window, the commissioner can make use of any available data to determine the most accurate MCR. Subsection (i) is intended to provide maximum flexibility for the commissioner during the calculation process.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.2551, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires TEA to calculate and make available school districts' maximum maintenance and operations compressed tax rates; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and office of the governor.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§48.2551, 48.004, and 48.011, as added by House Bill 3, 86th Texas Legislature, 2019.

<rule>

§61.1000. Maximum Compressed Tax Rate Calculation and Data Collection.

- (a) This section, made pursuant to Texas Education Code (TEC), §48.011 and §48.004, addresses calculations in TEC, §48.2551.
- (b) School districts' maximum compressed maintenance and operations (M&O) tax rates, as determined by TEC, §48.2551 and §48.2552, and relevant rules, shall be calculated using locally certified property values and adjusted to estimate for exclusions under Texas Government Code, §403.302(d).
- (c) The Texas Education Agency (TEA) will open a data collection from 12:01 a.m. on July 18 through 11:59 p.m. on August 1 for school districts. School districts must submit the following data:
 - (1) the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable for the preceding tax year;
 - (2) the chief appraiser's July 25 certified taxable property values from the certified appraisal roll under Tax Code, §26.01(a) or (a-1), as applicable for the current tax year;
 - (3) local exemption total dollar amounts for the preceding tax year, including, but not limited to, the following exemptions:
 - (A) Tax Code, Chapter 313, Texas Economic Development Act (expiring or new);
 - (B) local option General Residence Homestead;
 - (C) local option Age 65 or Older or Disabled;
 - (D) local option Historic or Archeological Sites; and
 - (E) local option Freeport;
 - (4) local exemption total dollar amounts for the current tax year, including, but not limited to, the following exemptions:
 - (A) Tax Code, Chapter 313, Texas Economic Development Act (expiring or new);
 - (B) local option General Residence Homestead;

- (C) local option Age 65 or Older or Disabled;
 - (D) local option Historic or Archeological Sites; and
 - (E) local option Freeport; and
- (5) district contact information.
- (d) TEA will calculate and make available preliminary maximum compressed tier one tax rates to each school district on or before August 5.
- (e) If TEA receives an appeal of a preliminary maximum compressed tax rate (MCR), TEA will issue a final determination to the school district no later than August 31.
- (f) If TEA does not receive an appeal of a preliminary MCR, the preliminary MCR automatically becomes a final MCR 10 calendar days following TEA's approval of the district's preliminary MCR.
- (g) A school district may appeal its preliminary MCR through the following process.
 - (1) The TEA division responsible for MCRs must receive a written appeal no later than 10 calendar days after TEA's approval of the district's preliminary MCR. The appeal must include adequate evidence and additional information that supports the position of the school district. Appeals received 11 calendar days or more after TEA approves a district's preliminary MCR will not be considered.
 - (2) TEA will only consider appeals that would result in a change of the preliminary MCR.
- (h) TEA will use any available data to calculate MCR absent data collection submissions from a school district.
- (i) The commissioner of education may waive a provision of this section if necessary to ensure the appropriate MCR calculation.